

## **IC 14-34-8**

### **Chapter 8. Bond Pool**

#### **IC 14-34-8-1**

##### **"Bond pool" defined**

Sec. 1. As used in this chapter, "bond pool" refers to the surface coal mine reclamation bond pool established by this chapter.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-8-2**

##### **"Committee" defined**

Sec. 2. As used in this chapter, "committee" refers to the surface coal mine reclamation bond pool committee established by this chapter.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-8-3**

##### **Surface coal mine reclamation bond pool**

Sec. 3. The surface coal mine reclamation bond pool is established to be used for surface coal mine reclamation under this chapter. The department shall administer the bond pool.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-8-4**

##### **Participation in bond pool**

Sec. 4. (a) As used in this section, "mining" includes contract mining.

(b) As used in this section, "operator" includes a predecessor in interest, subsidiaries, and affiliates as approved by the director.

(c) Participation in the bond pool is open to each operator applying for a permit under this article who, after May 3, 1978, has a five (5) year history of mining within Indiana and who meets the following conditions:

(1) Is not subject to an outstanding cessation order issued under:

(A) IC 13-4.1-11-5 (before its repeal); or

(B) IC 14-34-15-6.

(2) Does not owe a civil penalty under:

(A) IC 13-4.1-12 (before its repeal);

(B) IC 14-34-16; or

(C) the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328).

(3) Does not:

(A) owe a fee:

(i) under IC 13-4.1 (before its repeal);

(ii) under this article; or

(iii) collected under the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328); or

(B) have a history of delinquency in the payment of fees or civil penalties.

- (4) Has never been suspended under:
    - (A) IC 13-4.1-6.5-6 (before its repeal); or
    - (B) section 6 of this chapter.
  - (d) Participation in the bond pool is:
    - (1) optional for each permit application;
    - (2) subject to approval by the director; and
    - (3) not effective until the entrance fee has been paid in full.
  - (e) The director may, based on all available information, disapprove an application that may create an unreasonable risk to the bond pool.
  - (f) This chapter does not preclude compliance with IC 14-34-6 instead of participation in the bond pool before commencement of participation in the bond pool.
  - (g) Commencement of participation in the bond pool for the applicable permit constitutes an irrevocable commitment to participate in the bond pool for the applicable permit for the duration of the surface coal mining operations covered under the permit, unless the operator has replaced all bond pool liability with bonds acceptable under IC 14-34-6-1.
  - (h) An operator may apply for participation in the bond pool on a bond increment area under an existing permit. Commencement of participation in the bond pool for the bond increment area, within an existing permit, constitutes an irrevocable commitment to participate in the bond pool for the duration of that surface coal mining permit, unless the operator has replaced all bond pool liability with bonds acceptable under IC 14-34-6-1.
- As added by P.L.1-1995, SEC.27. Amended by P.L.71-2004, SEC.28.*

#### **IC 14-34-8-5**

##### **Fees for participation in bond pool**

- Sec. 5. (a) An application for participation in the bond pool must be accompanied by an entrance fee of one thousand dollars (\$1,000). The fees collected under this section shall be deposited in the post-1977 abandoned mine reclamation fund under IC 14-34-6-15 and dedicated as collateral for the bond pool. The entrance fee is not required on subsequent permits or bond increments after an operator has been accepted for participation in the bond pool.
- (b) In addition to the initial payments to the bond pool under subsection (a), an operator electing to participate in the bond pool must furnish a bond in an amount adequate to ensure phase I reclamation, except as provided in subsection (c).
- (c) The director may accept:
- (1) the bond of an operator without separate surety under the self-bonding provisions of IC 14-34-7; or
  - (2) deposits in lieu of bond under IC 14-34-6-5.
- (d) Subject to subsection (e), fees and payments under this chapter are:
- (1) not refundable; and
  - (2) in addition to all other fees required under this article.
- (e) The entrance fee required under subsection (a) is refundable

if the application is rejected.

(f) Bond pool participants may post incremental bonds under IC 14-34-6-1. The bonds may be posted in increments according to a schedule contained in the approved permit application.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-8-6**

##### **Suspension from bond pool**

Sec. 6. (a) Subject to subsection (c), an operator is suspended from the bond pool if the operator:

- (1) fails to pay a fee or civil penalty under:
  - (A) IC 13-4.1 (before its repeal);
  - (B) this article; or
  - (C) the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328); or
- (2) receives a cessation order that is not abated.

(b) If the final release of a bond has not been obtained within ten (10) years after the date of the last required report of the affected area for the permit, including new disturbances, the director may require the operator to:

- (1) replace the bond pool liability with bonds acceptable under IC 14-34-6-1; and
- (2) withdraw that operation from the bond pool.

If the operator fails to comply with the director's order to withdraw a mine area from the bond pool, the director may suspend the operator from the bond pool.

(c) An operator is not suspended from the bond pool if the director makes a written determination that mitigating circumstances are present that would not create an unreasonable risk to the bond pool if the operator's participation continues.

(d) An operator who is suspended from the bond pool shall cease all surface coal mining operations until the operator furnishes a new performance bond under IC 14-34-6-1 in an amount calculated under IC 14-34-6-2 for all disturbed areas and proposed additional mining areas under the permit. When the new performance bond has been executed, the bond pool has no additional liability for reclamation on any part of the area covered by the applicable permit.

*As added by P.L.1-1995, SEC.27. Amended by P.L.71-2004, SEC.29.*

#### **IC 14-34-8-7**

##### **Release of bond or other surety**

Sec. 7. The bond or other surety furnished by the operator under section 5 of this chapter shall be released by the director when the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with the operator's approved reclamation plan.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-8-8**

##### **Fees per acre for bond**

Sec. 8. (a) When an operator furnishes a bond under section 5 of this chapter to participate in the bond pool, the operator shall pay a fee of twenty-five dollars (\$25) per bonded acre into the bond pool.

(b) After the bond or other surety has been released under section 7 of this chapter, the operator shall annually pay ten dollars (\$10) per acre on the areas affected to the bond pool until phase II bond release is approved.

(c) After revegetation is established, the operator shall pay to the bond pool fund the following:

(1) Five dollars (\$5) per acre per year for the first three (3) years.

(2) Ten dollars (\$10) per acre per year after the first three (3) years on the areas affected until phase III bond release is approved.

(d) All fees collected under this section shall be:

(1) deposited in the post-1977 abandoned mine reclamation fund established by IC 14-34-6-15; and

(2) dedicated as collateral for the bond pool.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-8-9**

##### **Use of bond pool money to complete reclamation**

Sec. 9. After all available money furnished for a permit under section 5(b) and 5(c) of this chapter is exhausted under section 10 of this chapter, the money in the bond pool is available for the completion of reclamation necessary to achieve phase II and phase III bond release according to the approved reclamation plan on permitted areas covered by the bond pool by participating operators. The bond pool may not be used to complete reclamation on any areas not permitted and bonded under this chapter.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-8-10**

##### **Forfeiture of bonds**

Sec. 10. (a) Forfeiture of bonds of an operator participating in the bond pool shall be accomplished under IC 14-34-6-16. In addition to forfeiture, the director may proceed against the permittee of the surface coal mining operation by filing a civil action for injunctive or other relief in any court having jurisdiction to compel the permittee to perform the reclamation work in full compliance with this article, the rules adopted under this article, and the approved permit plans. The director may also file an action in any court having jurisdiction against the permittee to recover all money expended by the bond pool to accomplish the reclamation, including construction costs, engineering costs, administrative costs, and legal costs. In an action to recover these costs, the defendant may not do the following:

(1) Relitigate the facts giving rise to the forfeiture.

(2) Defend by claiming the forfeiture was improper.

(b) A:

(1) proceeding under this section does not constitute a waiver

by the director to proceed under other provisions of this article;  
and

(2) commencement of action under one (1) provision does not constitute an election to proceed solely under that provision.

(c) Liability of participants in the bond pool for reclamation of areas disturbed by other operators is limited to fees paid into the bond pool under sections 5 and 8 of this chapter.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-8-11**

##### **Surface coal mine reclamation bond pool committee**

Sec. 11. (a) The surface coal mine reclamation bond pool committee is established. The committee consists of the following:

(1) Five (5) members appointed by the director as follows:

(A) Three (3) members must represent a cross-section of coal operators.

(B) One (1) member must be a member of the commission.

(C) One (1) member must be a representative of the public with knowledge of reclamation performance guarantees.

(2) The director or the director's designee, who is a nonvoting member.

(b) The term of each member is four (4) years beginning July 1.

The director may remove an appointed member for cause.

(c) The committee shall do the following:

(1) Annually elect a chairman.

(2) Adopt rules for organization and procedure.

(d) Each member of the committee who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(e) The committee shall, acting in an advisory capacity to the director, do the following:

(1) Meet as necessary to perform duties under this chapter, but not less than one (1) time each year, for the purpose of formulating recommendations to the director concerning oversight of the general operation of the bond pool.

(2) Review and make recommendations concerning the following:

(A) All proposed expenses from the bond pool.

(B) All applications for admission to the bond pool.

(f) The director shall report annually to the committee and to the governor on the status of the bond pool.

*As added by P.L.1-1995, SEC.27. Amended by P.L.71-2004, SEC.30.*